

EXPLANATORY REPORT

Order concerning Tobacco and Tobacco Goods (OTab)

1. General Matters

The new Law on Foodstuffs (nLDA) defines in its Article 3 foodstuffs as nourishing products. Alcoholic drinks as well as tobacco and other goods for smokers are treated as foodstuffs. Now, a large part of the general provisions on nourishing products are not applicable to tobacco and other products intended for smokers. Also, there are many persons who do not understand the reasons why tobacco and these other products are regulated jointly with nourishing (nutritious) products in the Order on Foodstuffs (ODA; RS 817.02). The provisions on tobacco and products for smokers have therefore been extracted from the Order on Foodstuffs and henceforth are the subject of a separate Order.

Benefit has been made of this new Order to introduce on the same occasion directives into Swiss legislation that form part of the Community patrimony. This involves Council Directive No. 89/622 of 13 November 1989¹⁾ concerning the alignment of legislative, regulatory and administrative provisions of member States concerning the labelling of tobacco products as well as Council Directive No. 90/239 of 17 May 1990²⁾ concerning the alignment of the legislative, regulatory and administrative provisions of member States concerning the maximum tar content of cigarettes. Consideration has also been taken of Council Directive No. 92/41 of 15 May 1992³⁾ relating to amendment of Directive 89/622.

2. Commentary on the different provisions

First Article: Scope of application

The scope of application does not include only products containing tobacco but also tobacco substitutes, for example sold in the form of products without nicotine intended to be smoked (Art.

1) JO No. L 359 of 8 December 1989, p. 1.

2) JO No. L 137 of 30 May 1990, p. 36.

3) JO No. L 158 of 11 June 1992.

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- 2 -

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Article 2: Principle

Article 2 orders that only products in accordance with the provisions of the new Order (1st paragraph) can be delivered to the consumer. The requirements fixed by the Order for tobacco products are not exhaustive, however, particularly with regard to inscriptions on packaging. The provisions of the Federal Law of 21 March 1969 on the taxation of tobacco (RS 641.31) and those of the Federal Law of 9 June 1977 on measurements (RS 941.20) are reserved.

Article 3: Definitions

Paragraphs 1 and 2 (raw tobacco, homogenised or reconstituted tobacco) correspond to the former Article 420 ODA. The 3rd paragraph is taken from EC Directive No. 89/622 and the 4th paragraph is taken over from Article 2, 4th paragraph of this Directive. Thus it is the first time that tobacco products for oral use have been defined. These tobacco products to be sucked are known in Switzerland under the names of "snuf" or "catch".

Articles 4 and 5: Substances used for the manufacture and processing of tobacco products

These products contain the revised provisions of Article 420a ODA. They were tidied up within a small working group which had co-opted representatives of the industry. They were then submitted for consultation amongst the circles concerned. Modifying substances such as honey, sugars, extract of liquorice may henceforth be added to tobacco in larger proportions than in the past. The maximum content in substances of this type which is 6% of the total mass was increased to 15% total mass. Substances which are no longer used or which are dangerous on the toxicological level such as boric acid, diethyleneglycol or sulfamic acid (acide sulfamique) are no longer authorised. Some additives are newly authorised, for example sweeteners such as aspartame, acesulpham-K and thaumatococine or sorbate and benzoate.

Article 6: Specific requirements applicable to cigarettes

Limitation of the tar content of cigarettes corresponds to that fixed by Directive No. 90/239.

Article 7: Prohibited tobacco products

The prohibition against the selling or importing of tobacco products intended for oral use is in accordance with the EC regulations and was also asked for by certain Parliamentary interventions.

2021367911

- 3 -

Article 8: Labelling (principle)

This article contains the requirements concerning labelling applicable to all tobacco products. The general information may be contained on the packing in a single official language. On the other hand, the warning must be recorded in the three official languages on the packing of tobacco products.

Article 9: Indication of tar and nicotine contents

The determination and indication of the tar and nicotine contents of cigarettes correspond to Directive No. 90/239 and were already the subject of Article 420c, 2nd paragraph ODA. To that are henceforth added the requirements of the EC relating to the minimum surface reserved for such purpose on packing.

Article 10: General warnings

This article contains the warning requirements imposed by the EC Directives as well as provisions on the manner of printing them. The Article applies to the packing of all tobacco products.

Article 11: Warnings on packets of cigarettes and tobacco for cigarettes to be rolled by the recipient

The specific warning requirements on packets of cigarettes come from Directive No. 89/622. The variant formulated in the 3rd paragraph takes account of graphic problems resulting from the fact that the warnings must be printed in three languages in Switzerland. The parties concerned have given their assent to the wording of this provision.

Tobacco for cigarettes to be rolled by the recipient is treated in the same manner as cigarettes read for use with regard to requirements concerning warnings.

Article 12: Warnings on packets of other products for smokers

The provisions of this Article correspond to EC Directive No. 89/622. They regulate warning requirements applicable to all other products for smokers.

Article 13: Disclosure of particular properties

Article 13 has the same content as the old Article 420b ODA.

2021367912

- 4 -

Article 14: Protection against deception

The provisions of this article are inspired by Articles 15 and 19 ODA and have been reformulated to be adapted to tobacco and tobacco products.

Article 15: Advertising

Article 60 LDA gives the Federal Council jurisdiction for restricting, until particular provisions on the subject are issued, advertising for alcoholic drinks and tobacco aimed particularly at young people. The initiative directed to reducing problems connected with tobacco having been rejected by the people on 28 November 1993, the Federal Council continues to have the sole jurisdiction to draw up requirements aimed at protecting young people. This is why the restrictions provided for by Article 15 are based on the present law and, to the extent that they concern the protection of young people, on the agreement relating to restrictions that the tobacco industry has imposed on itself concerning advertising. This agreement was entered into on 24 August 1992 between the Association of Swiss Cigarette Manufacturers and the Swiss Commission for Fair Advertising.

The obsolete prohibition against the free sale of cigarettes to minors was abandoned. This prohibition was the subject of Article 420d ODA. Today the majority of minors have sufficient pocket money to buy a complete packet. As the prohibition had become a dead letter in practice, there was no longer any reason to maintain it.

Article 16: Tobacco substitutes

The content of Article 420e ODA was taken over but reformulated. This provision corresponds to the analogous article governing new products in the area of foodstuffs (Art. 3, paragraphs 2 to 4 of the new Order concerning Foodstuffs).

Article 17: Transitional provisions

The transitional provisions authorise still for a certain period the use of old packets and grant a period of time to prepare a new printing of packages. It involves the usual deadlines granted to industry in cases of this type (1st paragraph).

Article 18: Entry into force

It is provided to have the order concerning

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- 5 -

tobacco and tobacco products enter into force at the same time as the new law on Foodstuffs, that is, around the middle of 1994.

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